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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MAY 06 2002

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JAMES R. LARSEN, CLERK  
DEPUTY  
RICHLAND, WASHINGTON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MARIA CHAVEZ, RANULFO GUTIÉRREZ, PAZ  
ARROYO, ANTONIO MARTINEZ, SILVERIO  
DIAZ, individually and as class  
representatives,

CLASS ACTION

No. CT-01-5093-EFS

Plaintiffs,

v.

FIRST SUPPLEMENTAL COMPLAINT  
FOR FAIR LABOR STANDARDS ACT  
AND MINIMUM WAGE ACT  
VIOLATIONS

IBP, inc., LASSO ACQUISITION  
CORPORATION (**whose corporate name  
has now been changed to IBP, inc.**),  
and TYSON FOODS, INC., all Delaware  
Corporations,

Defendants.

**Jurisdiction**

1. The Court has jurisdiction pursuant to 28 U.S.C. §1331 and  
29 U.S.C. §216(b) over plaintiffs' Fair Labor Standards Act, 29  
U.S.C. §§ 201-219 ("FLSA") claims. The Court has supplemental  
jurisdiction pursuant to 28 U.S.C. §1367 over plaintiffs' state law  
claims which are based on the Minimum Wage Act, RCW chapter 49.46

FIRST SUPPLEMENTAL COMPLAINT FOR MINIMUM WAGE ACT AND  
FAIR LABOR STANDARDS ACT VIOLATIONS – Page 1

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ORIGINAL

1 ("MWA"), Industrial Welfare Act, RCW chapter 49.12, Wages-  
2 Deductions-Contribution-Rebates Act, RCW chapter 49.52 and  
3 regulations issued thereunder.

4 **Parties**

5 2. Plaintiffs Maria Chavez, Ranulfo Gutierrez, Paz Arroyo,  
6 Antonio Martinez, Silverio Diaz are adults employed at defendants'  
7 Pasco, Washington plant and have been so employed during the three  
8 years prior to the filing of this complaint.

9 3. Defendant IBP, inc. was and, on information and belief,  
10 may still be a Delaware Corporation headquartered in Dakota Dunes,  
11 South Dakota, and registered to do business in Washington State. It  
12 was and, on information and belief, may still be the world's largest  
13 producer of fresh beef, pork and related allied products. It has  
14 operated and, on information and belief, may still be operating a  
15 beef slaughtering and processing plant that it commonly refers to  
16 the Pasco plant.

17 4. Defendant Lasso Acquisition Corporation ("Lasso") is a  
18 recently-created wholly-owned subsidiary of defendant Tyson Foods,  
19 Inc. ("Tyson"), both of them being Delaware Corporations registered  
20 to do business in Washington State. On information and belief,  
21 Lasso recently acquired a majority of the shares of IBP, inc., is  
22 merging or has merged IBP, inc. into Lasso and/or Tyson, and Lasso  
23 and/or Tyson are operating or will soon be operating what was IBP,

1 inc. as the IBP Fresh Meat Division of Tyson Foods, Inc. On  
2 information and belief, Lasso and/or Tyson are or soon will become  
3 successors to the IBP, inc.'s rights and liabilities, including  
4 federal and state wage and hour law liabilities.

5 4a. **Supplemental Allegation.** Lasso was the surviving  
6 corporation in the merger between Lasso and IBP, inc. On November  
7 19, 2001, Lasso filed with the Washington Secretary of State its  
8 corporate name change from Lasso to IBP, inc. Plaintiffs now refer  
9 to the new name as "IBP, inc. [NEW]" to distinguish it from the pre-  
10 Tyson IBP, inc. All references in this complaint to "Lasso" shall  
11 be deemed to refer to "IBP, inc. [NEW]," which is the same corporate  
12 entity as Lasso with a name change.

### 13 **Facts**

14 5. Plaintiffs have been employed by defendants at their Pasco  
15 plant during all or part of the period from November 2, 1998 to the  
16 present time. Defendant IBP, inc. was the plaintiffs' employer  
17 through September 28, 2001, and, thereafter, upon information and  
18 belief plaintiffs have been and continue to be jointly employed by  
19 the defendants.

20 6. Plaintiffs' employment by defendants has been as part of  
21 an enterprise engaged in commerce and in the production of goods for  
22 commerce, as these terms are used in Sections 6 and 7 of the FLSA,  
23 29 U.S.C. §§ 206-207.

1           7.       Plaintiffs have performed and continue to perform unpaid  
2 work each morning, including, but not limited to, activities such as  
3 donning protective equipment (wire mesh gloves, wire mesh aprons,  
4 protective sleeves, rubber gloves, cloth gloves, plastic gloves,  
5 safety boots, scabbards, hard hats, safety glasses, hairnet,  
6 earplugs and other equipment), receiving and donning outer gloves,  
7 obtaining sand paper, obtaining knives, sanding their steel  
8 (equipment used to sharpen knives), waiting in line during these  
9 previous activities, and performing production floor work.

10           8.       Defendants deduct thirty-minute meal periods from  
11 plaintiffs' pay, even though a substantial amount of their meal  
12 period is devoted to work activities such as production floor work  
13 after the start of the meal period, doffing safety equipment and  
14 related garments, cleaning themselves and equipment, donning safety  
15 equipment and related garments, and returning to work on the  
16 production floor prior to the end of the thirty-minute meal period.

17           9.       Plaintiffs work 8 hours or more in a day without receiving  
18 a second paid rest break.

19           10.       Plaintiffs perform unpaid work after the official end of  
20 the paid work day, including but not limited to activities such as  
21 completing production floor work, doffing safety equipment and  
22 related garments, cleaning safety equipment, bagging gloves and  
23

1 garments, storing safety equipment in lockers and waiting in line at  
2 various steps in the above-described process.

3 11. Plaintiffs clock in at or near the beginning of the  
4 workday and clock out at or near the end of their workday, but are  
5 paid based on the official start and stop time, which excludes work  
6 performed before and after official hours.

7 12. Much of plaintiffs' off-the-clock work is performed in  
8 workweeks in which plaintiffs work in excess of forty hours.

9 13. The events described hereinabove continue at the time of  
10 the complaint, and, on information and belief, will continue.

11 14. Defendants have been and continue to willfully violate  
12 state and federal wage and hour statutes and regulations with the  
13 intent to deprive plaintiffs of a part of their wages.

14 15. Defendants have been engaged in extensive similar  
15 litigation, including *Alvarez et al. v. IBP*, No. CT-98-5005 RHW  
16 (U.S. Dist. Ct. E.D. Wa.) (*Alvarez*), that has resulted in a final  
17 judgment dated September 14, 2001 and supports collateral estoppel  
18 on issues in this case.

19 16. *Alvarez* involved the same issues and IBP plant as involved  
20 in this case. *Alvarez* only covered damages through May 14, 2000.  
21 In addition, *Alvarez* involved only 815 individuals who affirmatively  
22 opted into the case. While the present class includes many of the  
23

1 Alvarez class members, it also includes approximately 1,500 or more  
2 individuals who were not Alvarez class members.

3 17. Plaintiffs Maria Chavez and Ranulfo Gutierrez were named  
4 plaintiffs and class representatives in Alvarez. Plaintiff Antonio  
5 Martinez was an Alvarez class member. Alvarez is res judicata to  
6 the Alvarez class members and named plaintiffs as to class work  
7 performed through May 14, 2000, the end of the damages period.

8 18. Plaintiff Paz Arroyo performed slaughter division work  
9 that was included as Alvarez class work, but did not opt into the  
10 Alvarez case. Plaintiff Silverio Diaz performed Hides Division work  
11 that was not part of the Alvarez class action.

#### 12 Class Facts

13 19. Plaintiffs file this action on behalf of themselves and a  
14 class defined as follows:

15 All individuals performing production work in the Pasco  
16 plant processing, slaughtering, and hides divisions,  
17 during any time between November 2, 1998 to the present  
18 time, excluding supervisors, managers, quality control  
19 employees, guards, mechanics, laundry room employees,  
20 janitors, knife room employees, and packaging department  
21 employees whose jobs are limited to work performed after  
22 the product has been bagged and boxed.

23 20. Class members are employed and have been employed by  
defendants during the past three years in an enterprise engaged in  
commerce and in the production of goods for commerce, as these terms  
are used in Sections 6 & 7 of the FLSA, 29 U.S.C. §§ 206-207.

1           21. Class members performed and continue to perform unpaid  
2 work each morning, including, but not limited to, activities such as  
3 donning protective equipment (wire mesh gloves, wire mesh aprons,  
4 rubber aprons, protective sleeves, rubber gloves, cloth gloves,  
5 plastic gloves, safety boots, scabbards, hard hats, safety glasses,  
6 hairnets, ear plugs and other equipment), receiving and donning  
7 outer gloves, obtaining sand paper, obtaining knives, sanding their  
8 steel (equipment used to sharpen knives), waiting in line during  
9 these previous activities, and performing production floor work.  
10 Their work begins shortly after arriving in the plant.

11           22. Class members have thirty minute meal periods deducted  
12 from their pay, even though a substantial amount of their meal  
13 period is devoted to work activities such as production floor work  
14 after the start of the meal period, doffing safety equipment and  
15 related garments, cleaning themselves and equipment, donning safety  
16 equipment and related garments, and returning to work on the  
17 production floor prior to the end of the thirty-minute meal period.

18           23. Class members work 8 hours or more in a day without  
19 receiving a second paid rest break.

20           24. Class members perform unpaid work after the official end  
21 of the paid work day, including but not limited to activities such  
22 as completing production floor work, doffing safety equipment and  
23 related garments, cleaning safety equipment, bagging gloves and

1 garments, storing safety equipment in lockers and waiting in line at  
2 various steps in the above-described process. Their work ends  
3 shortly before they leave the plant.

4 25. Class members clock in at the beginning of their work day  
5 and clock out at the end of their work day, but are nonetheless paid  
6 based on the official start and stop time, plus 4 minutes for pre-  
7 shift and post-shift work. However, the pre-shift, post-shift and  
8 meal break work greatly exceeds 4 minutes.

9 26. Much of the class members' off-the-clock work is performed  
10 in workweeks in which class members work in excess of forty hours.

11 27. The events described hereinabove were continuing at the  
12 time of filing of the complaint, and, on information and belief,  
13 will continue.

14 28. Defendants have been and continue to willfully violate  
15 state and federal wage and hour statutes and regulations with the  
16 intent to deprive class members of a part of their wages.

17 29. Defendants have been engaged in extensive similar  
18 litigation, including *Alvarez et al. v. IBP*, No. CT-98-5005 RHW  
19 (U.S. Dist. Ct. E.D. Wa.) (Alvarez) that resulted in a final judgment  
20 dated September 14, 2001 supporting collateral estoppel on issues in  
21 this case.

22 30. Alvarez involved the same issues and IBP plant as involved  
23 in this case. Alvarez only covered damages through May 14, 2000.



1 In addition, Alvarez involved only 815 individuals who affirmatively  
2 opted into the case. While the present class includes many of the  
3 Alvarez class members, it also includes approximately 1,500 or more  
4 individuals who were not Alvarez class members.

5 31. The proposed class numbers in excess of 2,000 individuals  
6 and, therefore, joinder of all members is impracticable.

7 32. There are questions of law and fact common to the class.

8 33. Virtually all legal issues in this case will be common  
9 class issues, such issues as state law lunch and rest break issues,  
10 legal similarities and dissimilarities between the MWA and FLSA,  
11 FLSA work and Portal-to-Portal act issues, FLSA meal break issues,  
12 interpretation of 29 U.S.C. §203(o), deference to be given Wage and  
13 Hour Division Opinion letters relative to packaging plant work in  
14 December 1997 and January 2001, collateral estoppel and res judicata  
15 issues based on *Alvarez et al. v. IBP*, corporate law and FLSA  
16 successorship and joint employment issues arising out of IBP, inc.  
17 acquisition and merger, legal issues raised by affirmative defenses  
18 advanced by defendants, plaintiffs' right to conduct videotaping and  
19 expert evaluations inside the plant, and other legal issues which  
20 will arise during this litigation.

21 34. Class members share numerous common issues of fact,  
22 involving matters such as amounts of time it takes to do various  
23 activities, the time that production floor work begins and ends in

1 relation to paid starting and stopping time, liability and damages  
2 issues which will be tried applying MWA and FLSA principles of  
3 representative evidence, and the willfulness of defendants'  
4 violations for purposes of RCW 49.52.050 & .070 exemplary damages  
5 and the FLSA 3-year statute of limitations, 29 U.S.C. §255.

6 35. For example, class member claims will depend on production  
7 of common documents, such as electronic payroll records, job  
8 classification equipment lists, electronic time card data, and  
9 common company policies relative to equipment usage, sanitation,  
10 bathroom usage and other policies, these common documents subject to  
11 Fed.R.Civ.P. 26(a)(1) initial disclosures.

12 36. The claims of the representative parties are similar to  
13 the class claims. See allegations supra and infra.

14 37. The named plaintiffs will fairly and adequately protect  
15 the interests of the class and have made arrangements with  
16 experienced counsel to represent the class members with vigor and  
17 zeal within the bounds of the law. Counsel have extensive wage and  
18 hour class action litigation experience, including representing the  
19 plaintiffs in *Alvarez et al. v. IBP*.

20 38. The questions of law and fact common to the members  
21 predominate over any questions affecting only individual members,  
22 particularly in light of the rules of representative evidence and  
23 the relaxed burdens of proof in MWA and FLSA cases.

1           39. A class action is superior to other available methods for  
2 the fair and efficient adjudication of the controversy.

3           40. Individual class members have little interest in  
4 individually controlling the prosecution of their claims given the  
5 relatively small amounts of each claim, their relative lack of  
6 sophistication, and the difficulties involved in bringing individual  
7 litigation against one's current employer.

8           41. Plaintiffs are unaware of any other litigation concerning  
9 this controversy commenced by or for other class members, except for  
10 the Alvarez class action litigation, discussed *supra*.

11           42. This litigation should be concentrated in this forum  
12 because all class members were employed in defendants' Pasco plant,  
13 located within this forum.

14           43. The Court has the resources, abilities and procedures to  
15 effectively manage this class action, particularly with application  
16 of the substantive wage and hour law of representative evidence and  
17 relaxed burdens of proof.

18           44. Defendants have been and continue to willfully violate  
19 state and federal wage and hour statutes and regulations with the  
20 intent to deprive class members of a part of their wages and  
21 continues to do so.

22           **First Claim - State Wage and Hour Law Violations**

1           45. Plaintiffs repeat and reallege the prior allegations of  
2 the complaint as if repeated completely.

3           46. Defendants violate RCW 49.46.020 by permitting unpaid work  
4 to be performed prior to the start of the paid workday and after the  
5 end of the paid workday.

6           47. Defendants violate RCW 49.46.130 by permitting plaintiffs  
7 and class members to perform off-the-clock overtime work, i.e.,  
8 unpaid work performed by an employee who has worked in excess of  
9 forty hours during a week.

10           48. Defendants violate RCW 49.46.020, RCW 49.46.130, RCW  
11 49.12.005 and WAC 296-126-092 by failing to pay for meal breaks that  
12 are less than 30 minutes, the minimum length for an unpaid meal  
13 break under state law.

14           49. Defendants violate RCW 49.12.005 and WAC 296-126-092 by  
15 failing to provide a second 10-minute rest break on days when  
16 plaintiffs work 8 hours or more.

17           50. The above-described state law wage and hour violations  
18 were committed willfully and with intent to deprive class members of  
19 wages and thus violate RCW 49.52.050 and RCW 49.52.070.

20           **Second Claim - Fair Labor Standards Act Violations**

21           51. Plaintiffs repeat and reallege the prior allegations of  
22 the complaint.  
23

1           52. Plaintiffs and class members are similarly situated with  
2 regard to the claims made in this complaint.

3           53. Defendants violate the overtime provisions of Section 7 of  
4 the FLSA, 29 U.S.C. §207, by permitting unpaid overtime work,  
5 including unpaid overtime work prior to the start of the paid work  
6 day, during meal periods that do not qualify as bona fide meal  
7 periods pursuant to FLSA regulations and case law, and after the end  
8 of the paid work day.

9                                   **Prayer for Relief**

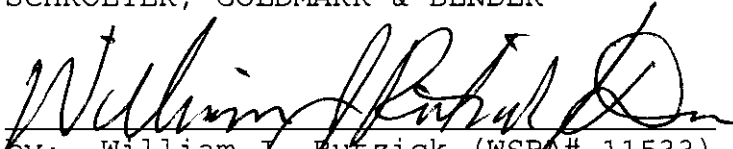
10           Wherefore, plaintiffs, individually and on behalf of the class,  
11 pray for relief against each defendant as follows:

12           1. With regard to the state law claims, plaintiffs pray  
13 for Fed.R.Civ.P. 23(b)(2) and 23(b)(3) class certification, damages,  
14 exemplary damages, prejudgment interest, costs, attorney fees  
15 pursuant to RCW 49.46.090, RCW 49.48.030, RCW 49.52.070 and  
16 equitable grounds, and for such other and further relieve as the  
17 Court deems just, equitable and within its powers to grant against;


18           2. With regard to the FLSA claims, plaintiffs pray for  
19 FLSA class certification pursuant to 29 U.S.C. §216(b), damages,  
20 liquidated damages, prejudgment interest, costs, attorney fees  
21 pursuant to 29 U.S.C. § 216(b), and such other and further relief as  
22 the Court deems just, equitable and within its powers to grant.

23 DATED this 27<sup>th</sup> day of March, 2002.

SCHROETER, GOLDMARK & BENDER

  
by: William J. Rutzick (WSBA# 11533)  
Kathy Goater (WSBA# 9648)

LAW OFFICE OF DAVID N. MARK

  
by: David N. Mark (WSBA #13908)  
Attorneys for the Plaintiffs

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23 CORPORATION, TYSON FOODS,  
INC., all Delaware corporations,

24 Defendants.  
25  
26

No. CT-01-5093-EFS

DECLARATION OF SERVICE

ORIGINAL

1 Susan Shaver hereby declares as follows:

2 That on May 3, 2002, I had a copy of the following document:

3  
4 First Supplemental Complaint for Fair Labor Standards Act and Minimum  
5 Wage Act Violations

6  
7 served upon attorneys of record for defendants by having said copy mailed,  
8 postage prepaid or hand delivered to them at the office addresses below:

9  
10 Barbara J. Duffy  
11 Douglas E. Smith  
12 Nancy W. Anderson  
13 LANE POWELL SPEARS LUBERSKY  
14 1420 Fifth Avenue, Suite 4100  
15 Seattle, WA 98101  
16 Attorneys for Defendants Lasso Acquisition Corporation, Tyson Foods,  
17 Inc. and IBP, inc.

18 I declare under penalty of perjury under the laws of the United States that  
19 the foregoing is true and correct.

20 DATED this 3<sup>rd</sup> day of May, 2002.

21 SCHROETER, GOLDMARK & BENDER

22  
23   
24 SUSAN SHAVER  
25  
26